

ESTTA Tracking number: **ESTTA705424**

Filing date: **10/29/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223897
Party	Defendant Woodnut Brands
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Date	10/29/2015
Attachments	151028 Opposition 91223897 Applicant Response to Notice of Opposi- tion.PDF(836337 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

University of Mississippi,)	Opposition No. 91223897
)	
Opposer,)	Application Serial No.: 86/427678
)	Filed: October 18, 2014
vs.)	Mark: HOTTY TODDY
)	
Woodnut Brands, LLC,)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

COMES NOW Applicant Woodnut Brands, LLC, located at 200 Jefferson Avenue, Suite 900, Memphis, Tennessee 38103, and hereby answers the Notice of Opposition filed on September 18, 2015, to Application Serial No. 86/427678 filed on October 18, 2014.

- 1. The University of Mississippi is the owner of the common-law word mark Hotty Toddy. “Hotty Toddy” has been the school cheer of the University of Mississippi since at least 1948. Since that time, the mark has been used in conjunction with a variety of goods and services offered by the University.**

Answer: Denied. “Hotty Toddy” was never filed or registered by the University of Mississippi as a trademark with the United States Patent and Trademark Office. Applicant Woodnut Brands LLC was the first to file “Hotty Toddy” as a trademark, under Application No. 86/427678 on October 18, 2014.

- 2. The University of Mississippi has spent significant amounts of money and other resources to market, promote, and advertise its goods identified in Paragraph 1. Through these efforts, “Hotty Toddy” enjoys valuable consumer recognition and goodwill, and the public has come to know “Hotty Toddy” as an indicator of goods and services that originate from the University of Mississippi. “Hotty Toddy” identifies goods and services that originate from the University of Mississippi and distinguishes them from those of others.**

Answer: Denied. There is no nexus between a place of learning such as the University of Mississippi and a brand of whiskey. Further, there is no risk of confusing the two.

3. [Opposition's Notice contains no Paragraph 3.]

- 4. The University of Mississippi is informed and believes that Applicant, having an address at Suite 900, 200 Jefferson Avenue, Memphis, Tennessee 38103, is the current owner of record of the '678 Application, filed on October 18, 2014, for use on whiskey in International Class 33.**

Answer: Admitted.

- 5. The University of Mississippi has adopted and used continuously the mark "Hotty Toddy" in interstate commerce since 1948, long before Applicant's intent-to-use application was filed on October 18, 2014.**

Answer: Neither admitted nor denied, but Applicant demands strict proof claimed by Opposition.

- 6. The word-mark component of the mark depicted in the '678 Application is identical to the University's common-law mark "Hotty Toddy" in appearance and commercial impression.**

Answer: Neither admitted nor denied, but Applicant demands strict proof claimed by Opposition. Trademark design and dress of the whiskey bottle will have nothing in common with the chant sometimes used at certain limited sporting events.

- 7. Applicant's goods and services as described in the '678 Application are highly related to the goods and services identified with the University of Mississippi's "Hotty Toddy" mark, referenced in Paragraph 1, and with which the University has been using its mark for many years.**

Answer: Denied. Applicant demands strict proof of goods and services that may be confused by the public with regard to Applicant's whiskey claimed under Class 33.

8. Prior to Applicant's filing of the '678 Application, the University of Mississippi had already (1) acquired a common-law mark in the words "Hotty Toddy"; (2) used "Hotty Toddy" in commerce in connection with its goods and services; and (3) acquired fame in "Hotty Toddy" for its goods and services by virtue of the recognition of the general consuming public of the United States.

Answer: Denied. Applicant demands strict proof of how the words "Hotty Toddy," or a chant of the same used at certain limited sporting events in Oxford, Mississippi, compares to whiskey.

9. Upon information and belief, Applicant intends to offer services in whole or in part within the same channels of trade and to the same class of purchasers as the University of Mississippi.

Answer: Denied. Applicant is required by law to offer goods (whiskey) to purchasers over the age of 21, in a highly-regulated industry. Opposition provides education largely to those under that age, who are excluded from the purchase of liquor by state law.

10. The University of Mississippi believes and alleges that when Applicant uses the applied-for design mark in connection with the goods identified in the '678 Application, consumers are likely to believe that the goods originate with the University of Mississippi.

Answer: Denied. The name of the University of Mississippi, its logo, etc. will not be visible on any packaging associated with "Hotty Toddy" whiskey, nor will the product be bottled anywhere within the State of Mississippi. Further, the University of Mississippi is a place of learning and does not sell alcohol on its property. No nexus exists between the University of Mississippi and any product containing alcohol.

11. The University of Mississippi believes and alleges that registration of the '678 Application will enable Applicant to trade upon and utilize the goodwill established by the University of Mississippi in its "Hotty Toddy" mark.

Answer: Denied. Applicant believes the general public outside of the State of Mississippi is not likely to associate "Hotty Toddy" whiskey with the University of Mississippi. Residents of other states will not likely associate the expression "Hotty Toddy" with the University of Mississippi.

12. If the Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to the University of Mississippi, as well as confusion in the relevant marketplace.

Answer: Denied. There is no confusion between a place of learning such as the University of Mississippi and the alcohol industry. Had the Opposition wanted to protect its mark, it could have filed for an exclusive right with the USPTO.

13. As a result of the similarity between the University's "Hotty Toddy" mark and the applied-for mark in the '678 Application and the highly related nature of the goods and services of the parties' marks, the '678 Application is likely to cause confusion, mistake or deception in the trade and among purchasers as to the source, origin or sponsorship of the parties' respective goods and services pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

Answer: Denied. There is no similarity between a chant (which is truly not a trademark), or the words "Hotty Toddy" (that were not registered by the University of Mississippi), and an alcohol beverage sold in a regulated marketplace. There would be no confusion or mistaken identity or association in the purchase of liquor.

14. The mark identified in the '678 Application would dilute the distinctive quality of the University of Mississippi's "Hotty Toddy" mark, pursuant to Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

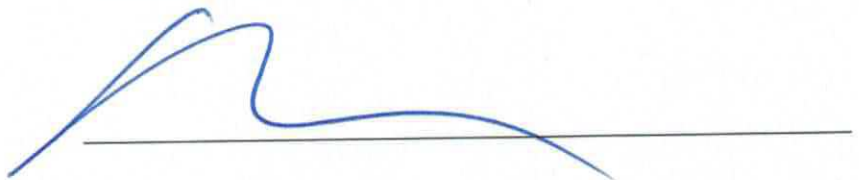
Answer: Denied. The 678 Application does not dilute the quality of the chant, which is only heard at football games involving the University of Mississippi, or dilute the expression "Hotty Toddy," which is not synonymous with anything remotely connected with education.

15. The mark identified in the '678 Application would falsely suggest a connection with the University of Mississippi, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. §1052(a).

Answer: Denied. The trademark does not suggest any connection with the University of Mississippi.

WHEREFORE, Applicant Woodnut Brands, LLC prays that this Opposition be denied and that registration of U.S. Trademark Application Serial No. 85/030080 be approved.

Respectfully submitted,


A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Charles E. Waldman, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on Larry Leroy "Lee" Tyner, Jr., University of Mississippi General Counsel, Lyceum Room 209, P.O. Box 1848, University, Mississippi 38677, by mailing said copy on October 29, 2015, via First Class Mail, postage prepaid.

A handwritten signature in blue ink, similar to the one above, positioned above a solid horizontal line.

Charles E. Waldman, Esq.